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SERVICE DATE – SEPTEMBER 16, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21072

NATIONAL EXPRESS LLC—ACQUISITION OF CONTROL—NEW DAWN TRANSIT,  
LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On August 17, 2016, National Express LLC (National Express or Applicant), a non-carrier, filed an application under 49 U.S.C. § 14303 to acquire control of New Dawn Transit, LLC (New Dawn). The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 & 1182.8.

DATES: Comments must be filed by October 31, 2016. Applicant may file a reply by November 15, 2016. If no opposing comments are filed by October 31, 2016, this notice shall be effective on November 1, 2016.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21072 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicant's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1500, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe (202) 245-0376. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Applicant, a non-carrier, states that it is a holding company organized under the laws of the state of Delaware that is indirectly controlled by a British corporation, National Express Group, PLC (Express Group). Applicant states that Express Group indirectly controls the following passenger motor carriers (National Express Affiliated Carriers): Beck Bus Transportation Corp. (Beck); Carrier Management Corporation (CMI); Durham School Services, L.P. (Durham); Folmsbee's Transportation Inc. (Folmsbee); MV Student Transportation, Inc. (MV); National Express Transit Corporation (NETC); National Express Transit Services Corporation (NETSC); Petermann Ltd. (LTD); Petermann Northeast LLC (Northeast); Petermann Northwest LLC (Northwest); Petermann Southwest LLC (Southwest); Petermann STSA, LLC (STSA); The Provider Enterprises, Inc. (Provider); Rainbow Management Service Inc. (Rainbow); Safeway Training and Transportation Services

Inc. (Safeway); Septran, Inc. (Septran); Smith Bus Service, Inc. (Smith); Suburban Paratransit Service, Inc. (Suburban Paratransit); Trans Express, Inc. (Trans Express); and White Plains Bus Company, Inc. (White Plains).

Applicant alleges the following facts regarding the National Express Affiliated Carriers held by Express Group:

- Beck is a passenger motor carrier primarily engaged in providing student school bus transportation services in the states of Illinois and Indiana under contracts with regional and local school jurisdictions. Beck also provides charter passenger services to the public (MC-143528).
- CMI is a passenger motor carrier doing business as Matthews Bus Company and is primarily engaged in providing student school bus transportation services in the state of Pennsylvania under contracts with regional and local school jurisdictions. CMI also provides intrastate charter passenger services to the public.
- Durham is a passenger motor carrier primarily engaged in providing student school bus transportation services in approximately 32 states under contracts with regional and local school jurisdictions. Durham also provides charter passenger services to the public (MC-163066).
- Folmsbee is a passenger motor carrier primarily engaged in providing unregulated student school bus transportation services in the state of New York under contracts with regional and local school jurisdictions (MC-818630).
- MV is a passenger motor carrier primarily engaged in providing student school bus transportation services in the state of Missouri under contracts with regional and local school jurisdictions. MV also provides charter passenger services to the public (MC-148934).
- NETC is an intrastate passenger motor carrier with its principal place of business in Cincinnati, Ohio.
- NETSC is a passenger motor carrier engaged primarily in providing intrastate transit services in the areas of Westmoreland, Pa.; Arlington, Va.; Greensboro, N.C.; Vallejo, Cal.; and Yuma, Ariz.
- LTD is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of Ohio under contracts with regional and local school jurisdictions. LTD also provides charter passenger services to the public (MC-364668).
- Northeast is a passenger motor carrier primarily engaged in providing student school bus transportation services, primarily in the states of Ohio and Pennsylvania under contracts with regional and local school jurisdictions. Northeast also provides charter passenger services to the public (MC-723926).
- Northwest is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services under contracts with regional and local school jurisdictions.
- Southwest is a passenger motor carrier primarily engaged in providing student school bus transportation services in the state of Texas under contracts with regional and local school jurisdictions. In addition to its core school bus services, Southwest also provides charter passenger services to the public (MC-644996).

- STSA is a passenger motor carrier primarily engaged in providing student school bus transportation services, primarily in the state of Kansas under contracts with regional and local school jurisdictions. STSA also provides charter passenger services to the public (MC-749360).
- Provider is a passenger motor carrier doing business as Provider Bus, and is primarily engaged in providing non-regulated school bus transportation services in the state of New Hampshire under contracts with regional and local school jurisdictions.
- Rainbow provides interstate and intrastate charter and special party passenger transportation services in the state of New York (MC-490015).
- Safeway is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of New Hampshire under contracts with regional and local school jurisdictions (MC-522039).
- Septran is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of Illinois under contracts with regional and local school jurisdictions (MC-795208).
- Smith is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of Maryland and surrounding areas under contracts with regional and local school jurisdictions.
- Suburban Paratransit is a motor carrier providing paratransit services primarily in Westchester County and Bronx, N.Y.
- Trans Express provides interstate and intrastate passenger transportation services in the state of New York (MC-187819).
- White Plains is a passenger motor carrier that operates primarily as a provider of non-regulated school bus transportation services in the State of New York. White Plains also operates as a motor passenger carrier providing charter service to the public (MC-160624).

Applicant states that New Dawn is a New York limited liability company that holds authority from the Federal Motor Carrier Safety Administration as a motor carrier of passengers (MC-932702). Applicant explains that all of the issued and outstanding membership equity interest of New Dawn is owned and held by Indra Fouche, an individual (the Seller). Applicant further states that the Seller has no direct or indirect ownership interest in any other interstate passenger motor carrier.

According to Applicant, New Dawn operates primarily as a provider of non-regulated school bus transportation services, transporting children to and from school throughout the metropolitan area of New York City. Applicant adds that New Dawn maintains a fleet of 140 buses and has approximately 154 drivers, and that it also operates as a motor passenger carrier providing charter service to the public using its fleet of buses.

Applicant explains that National Express would assume direct 100 percent control of New Dawn through the membership ownership.

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the

proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicant submitted information, as required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), and a statement that the aggregate gross operating revenues of the National Express Affiliated Carriers and New Dawn exceeded \$2 million for the preceding 12-month period. See 49 U.S.C. § 14303(g).<sup>1</sup>

Applicant submits that the proposed transaction would have no significant impact on the adequacy of transportation services to the public, as New Dawn would continue to provide the services it currently provides using the same names for the foreseeable future. Applicant states that New Dawn “will continue to operate, but going forward, it will be operating within the National Express corporate family, an organization already thoroughly experienced in passenger transportation operations.” (Appl. 12.)

Applicant states that “[t]he addition of [New Dawn] to the carriers held by National Express is consistent with the practices within the passenger motor carrier industry of strong, well-managed transportation organizations adapting their corporate structure to operate several different passenger carriers within the same market, but in different geographic areas.” (*Id.*) Applicant asserts that New Dawn is experienced in some of the same market segments already served by some of the National Express Affiliated Carriers. Applicant expects the transaction to result in operating efficiencies and cost savings derived from economies of scale, all of which would help to ensure the provision of adequate service to the public.

Applicant further asserts that the acquisition of New Dawn would serve to enhance the viability of the overall National Express organization and the operations of the National Express Affiliated Carriers, which would ensure the continued availability of adequate passenger transportation service for the public. (*Id.*)

Applicant also claims that neither competition nor the public interest would be adversely affected. Applicant states that New Dawn is a relatively small carrier in the overall markets in which it competes: unregulated metropolitan school bus operations, and provider of charter services. Applicant states that school bus operators typically occupy a limited portion of the charter business because (i) the equipment offered is not as comfortable as that offered by motor coach operators; and (ii) scheduling demands imposed by the primary school bus operation impose major constraints on charter services that can be offered. It further explains that the charter services offered by New Dawn are geographically dispersed from those of the National Express Affiliated Carriers, and that there is limited overlap in service areas and/or in customer bases among the National Express Affiliated Carriers and New Dawn. Thus, Applicant states that the impact of the contemplated transaction on the regulated motor carrier industry would be minimal at most and that neither competition nor the public interest would be adversely affected.

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<sup>1</sup> Applicants with gross operating revenues exceeding \$2 million are required to meet the requirements of 49 C.F.R. § 1182.

Applicant asserts that there are no fixed charges associated with the contemplated transaction. Applicant also states that it does not anticipate a measurable reduction in force or changes in compensation levels and/or benefits to employees. Applicant submits, however, that staffing redundancies could potentially result in limited downsizing of back-office or managerial level personnel.

The Board finds that the acquisition proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available on our website at “WWW.STB.GOV”.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective November 1, 2016, unless opposing comments are filed by October 31, 2016.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: September 12, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.